

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 9, 2008 Session

In Re M.A.C. and D.L.C.

**Appeal from the Juvenile Court for Rutherford County
No. TC584 Donna Aline Scott, Judge**

No. M2007-01981-COA-R3-PT - Filed July 17, 2008

Appellee, the paternal grandmother who has had legal custody of the two children of the Appellant, mother of the children, since after their births, filed a petition in the Juvenile Court for Rutherford County in December of 2006 to terminate Mother's parental rights. Following a trial on June 14, 2007, the court terminated Mother's parental rights based on abandonment and severe child abuse. We affirm the lower court's ruling finding clear and convincing evidence that the mother abandoned the children by failing to support them; that termination of the mother's parental rights is in the best interest of the children; and in terminating Mother's parental rights. We reverse the court's findings of abandonment by failing to visit and severe child abuse on the part of Mother.

Tenn R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed as Modified

RICHARD H. DINKINS, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and FRANK G. CLEMENT, Jr., J., joined.

R. Michelle Blaylock-Howser, Murfreesboro, Tennessee, for the appellant, K. K. A.

W. Kennerly Burger, Murfreesboro, Tennessee, for the appellee, S. P.

Mary Bonita Tucker, Murfreesboro, Tennessee, Guardian Ad Litem.

OPINION

The two children of Mother/Appellant, M.A.C. (DOB 02/05/03) and D.L.C. (DOB 06/15/05), have been in the continuous care and custody of S. P., Grandmother/Appellee,¹ with brief exceptions, since their births. Following his birth, M.A.C. spent several weeks in the hospital and then resided with his mother and father for approximately nine (9) months. Likewise, D.L.C. resided only briefly with his mother and father after his birth. Grandmother petitioned the Juvenile Court for Rutherford County for custody of the children in September of 2005; finding both children to be dependent and neglected, the court entered an Order in October of 2005 granting the petition.²

The Order granting Grandmother custody of the children allowed Mother limited visitation with the children. In light of concerns regarding alcohol and drug use by the parents and the parents' failure to attend to the special health needs of M.A.C., who has serious respiratory problems and requires a special diet, the Order also directed Mother to attend parenting classes, undergo routine drug screening, and seek regular counseling.

Mother's compliance with the October 2005 Order was intermittent, as was her support and visitation. In July of 2006, the parties appeared in court to determine the status of the dependency and neglect proceeding.³ The court determined that Mother could engage in regular visitation with the children at the discretion of Grandmother with the expectation that Mother might eventually regain full custody.

Encouraged by Mother's demonstration of improved responsibility towards her children following the July 2006, hearing, Grandmother allowed expanded visitations in August and early September, which included overnight visitation at Mother's residence. However, after picking up the children following an early September weekend visit, Grandmother noticed a dramatic change in M.A.C.'s behavior; particularly, he began displaying extreme behavioral changes in his personality such as deliberately trying to hurt his younger sibling, constantly being angry, regressing in his potty training, and constantly being upset. When asked by Grandmother what was wrong, he told her that B.H., Mother's boyfriend, had inappropriately touched his private parts and engaged in oral sex with him. Grandmother testified that when she questioned Mother about this behavior, Mother said only, "You can't believe everything M.A.C. says."

¹The parties will be referred to herein as "Mother" and "Grandmother".

²We have no record in this appeal of the dependency and neglect proceedings initiated in 2005 and our knowledge of the proceedings and matters raised therein is based on testimony at the termination of parental rights hearing.

³The father of M.A.C. and D.L.C. died in April of 2006.

Grandmother sought the advice of the local rape and sexual abuse center and reported the incident to the Department of Children's Services ("DCS"). The child was referred to the Rape and Abuse Crisis Center in Nashville to undergo counseling and an Immediate Protection Agreement was entered into between Grandmother and the DCS case manager on September 19, 2006. The Agreement provided, *inter alia*, that the children would not have any contact with Mother or her boyfriend until the investigation was complete. Grandmother filed an amended and supplemental petition on December 21, 2006, seeking to terminate Mother's parental rights and alleging, *inter alia*, that M.A.C. had been subjected to severe child abuse; that Mother failed to financially support the children; and that, because of Mother's asserted lack of "willingness and commitment to place the best interests of the minor children before her personal relationships" and "serious breaches of parental responsibility," termination was in the best interest of the children. Following a hearing on the amended petition on June 14, 2007, the court found that Mother's rights should be terminated on the grounds of (1) abandonment by failing to support and failing to visit the children "in any meaningful manner" and (2) severe child abuse.⁴

STANDARD OF REVIEW

This court never takes the issue of terminating parental rights lightly and renders its decision only after intense examination of the facts and the law. Due to the grave consequences that accompany such decisions, courts must apply individualized decision-making to a termination decision. *See In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999). The court first determines what standard of review must be applied and must then turn to Tenn. Code Ann. § 36-1-113, the controlling statute, in determining whether a parent's rights should be terminated. The court must first find that at least one of the grounds for termination listed in the statute exists in the case at hand; secondly, that terminating the parental rights is in the best interest of the child.

In accordance with Tenn. R. App. P. 13(d), this court must review each of the trial court's specific findings of fact *de novo* with a presumption of correctness unless the evidence preponderates otherwise. Then, the court must determine whether the facts, either as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements necessary to terminate parental rights. *See Jones v. Garrett*, 92 S.W.3d 838 (Tenn. 2002); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

Because the decision to terminate parental rights affects fundamental constitutional rights and carries grave consequences, courts apply a higher standard of proof when adjudicating termination cases. A court may terminate a person's parental rights only if (1) the existence of at least one statutory ground is proved by clear and convincing evidence and (2) it is shown, also

⁴ In this appeal, Mother asserts that, in its oral ruling, the trial court found the additional grounds of persistence of conditions for six months after removal from the parent's home and failure to follow a permanency plan in support of its determination to terminate Mother's parental rights. Those grounds, however, are not contained in the Order which is the subject of this appeal and, as aforesaid, the record of the dependency and neglect proceeding is not before us; consequently, the additional grounds cited by Mother are not being considered by this court.

by clear and convincing evidence, that termination of the parent's rights is in the best interest of the child. *See* Tenn. Code Ann. § 36-1-113; *See In re Adoption of A.M.H.*, 215 S.W.3d 793, 808-09 (Tenn. 2007); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). "This heightened standard . . . serves to prevent the unwarranted termination or interference with the biological parent's rights to their children." *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998).

In order to be clear and convincing, evidence must eliminate any serious or substantial doubt about the correctness of the conclusions to be drawn from the evidence. *See In re Valentine*, 79 S.W.3d 539, 546 (citing *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992)). Such evidence should produce in the fact-finder's mind a firm belief or conviction as to the truth of the allegations sought to be established. *See In re M.L.P.*, 228 S.W.3d 139, 143 (Tenn. Ct. App. 2007); *In re Georgianna H.*, 205 S.W.3d 508, 516 (Tenn. Ct. App. 2006). In contrast to the preponderance of the evidence standard, clear and convincing evidence should demonstrate that the truth of the facts asserted is "highly probable" as opposed to merely "more probable than not." *In re M.A.R.*, 183 S.W.3d 652, 660 (Tenn. Ct. App. 2005). The burden is on the party seeking to terminate parental rights to present clear and convincing evidence that grounds exist and that termination would serve the best interests of the children. *See* Tenn. Code Ann. § 36-1-113(c)(1)(2).

ANALYSIS

I. Abandonment

Tenn. Code Ann. § 36-1-113(g)(1) designates "abandonment," as defined in Tenn. Code Ann. § 36-1-102, as a ground for the termination of parental rights. Tenn. Code Ann. § 36-1-102(1)(A)(i) defines "abandonment" in part pertinent to this appeal as follows:

For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child.

Tenn. Code Ann. 36-1-102(1)(A)(i).

In order to find "abandonment" there must be either "willful" failure of visitations or "willful" failure to render support by the parent whose rights are being terminated. As found by the court in *In re S.M.*, 149 S.W.3d 632, 642 (Tenn. Ct. App. 2004), "willfulness" in parental rights cases does not require the same standard of culpability required by the penal code nor does it require malevolence or ill will. Willful conduct consists of acts or failures to act that are intentional or voluntary rather than accidental or inadvertent. Conduct is "willful" if it is the product of free will rather than coercion. Thus, a person acts "willfully" if he or she is a free

agent, knows what he or she is doing, and intends to do what he or she is doing. *See id.* (citations omitted).

The juvenile court found by “clear and convincing” evidence that Mother “purposefully, willfully, and intentionally failed to visit with the children in any meaningful manner for several months.” The court also found that, “although able bodied and fully employed, the mother has provided virtually no support for the children since the children were placed in the care of the paternal grandmother, evidencing, by clear and convincing proof, a willful intent to forego any support duty owed by the mother to the minor children.”

A. Visitation

Mother argues that the evidence is insufficient to support the juvenile court’s determination that she abandoned the children by failing to visit. She contends that she was prevented by Grandmother from visiting the children in the period following Grandmother’s entering into the Protection Agreement with DCS on September 19, 2006, a contention supported by the testimony of Grandmother. Testimony was that, in August 2006, Mother and Grandmother were trying out an arrangement whereby Mother would keep the children for four days during the week and Grandmother would have the children for the weekend. Because of Grandmother’s illness, Mother kept the children for eight consecutive days, ending on Labor Day.⁵

The amended petition seeking termination of Mother’s parental rights was filed on December 21, 2006. In light of Mother’s efforts in August of 2006 to increase her visitation with the children, including having custody with them for a period which ended in September, we cannot conclude, as did the juvenile court, that Mother failed to engage in meaningful visitation with the children in the four month period preceding the filing of the amended petition.

In addition, Grandmother’s actions in preventing Mother from visiting the children, however grounded in Grandmother’s understanding of the agreement with DCS, do not support a finding that Mother willfully failed to exercise visitation with the children. Where the failure to visit is not willful, failure to visit is not abandonment. *See In re Adoption of A.M.H.*, 215 S.W.3d 793, 810 (Tenn. 2007). Further, where attempts by a parent to visit his or her children is thwarted by acts of others and circumstances beyond his or her control, that parent has not willfully abandoned the child. *See In re Swanson*, 2 S.W.3d 180, 189 (Tenn. 1999). In this regard, the juvenile court found that Mother had “reasonable resources” available to her to seek the court’s intervention but failed to do so. Mother testified that a hearing had been set⁶ and that she planned to bring Grandmother’s failure to allow her visitation to the court’s attention at the hearing; she also testified as to her efforts to comply with the prior orders of the juvenile court as well as to her lack of knowledge of the DCS agreement. Considering the record on this issue in its entirety, the proof does not sustain a finding of intentional or voluntary actions or failure to act on Mother’s behalf sufficient to conclude that her failure to challenge Grandmother’s actions constituted willful abandonment of her children.

⁵ Labor Day fell on September 4, 2006.

⁶ Counsel acknowledged that a prior setting of the case had been continued.

B. Support

The juvenile court also found the mother “provided virtually no support for the children” since they were placed in the care and custody of the grandmother. Mother, to the contrary, argues that the evidence does not show voluntary and intentional failure to support on her behalf.

For nearly three years prior to the hearing (during which the children were in the custody of Grandmother), Mother was employed as a waitress earning between \$200 and \$300 per week. There were, as Mother points out, no provisions setting support payments included in the orders granting Grandmother custody of the children. Mother testified that she attempted to give Grandmother checks or money orders for the birthdays of each of the children but that they had not been cashed. Grandmother testified and the court found that Mother contributed a total of \$90.00 in support for the year 2005 and that, in one incident, Mother left a bag of clothes for the children on Grandmother’s porch which were too small for the children and, due to their condition, otherwise unable to be worn. In the four months preceding the filing of the amended petition, Mother had tendered a \$40 check to Grandmother, which Grandmother did not cash; Mother subsequently stopped payment on the check.

We agree with the juvenile court that Mother’s history of support of the children was not reasonable and showed willful failure to make reasonable payments toward their support. The proof fully supports a finding that she contributed only token support⁷ to her children not only over the four month period preceding the filing of the amended petition, but also over the period the children had been in the custody of Grandmother. Though Mother was not under a court order setting support for her children, such an order is not required. The former common law obligation to support is codified at Tenn. Code Ann. § 34-1-102(1)(a);⁸ as well, it is the public policy of Tennessee that parents owe a duty of support to their children. *See Berryhill v. Rhodes*, 21 S.W.3d 188, 192 (Tenn. 2000).

II. Severe Child Abuse

Mother challenges the sufficiency of the evidence to support the juvenile court’s conclusion that M.A.C. was the victim of severe child abuse, as defined in Tenn. Code Ann. § 37-1-102(b)(21), based on the court’s findings that he had been sexually abused by Mother’s boyfriend, causing substantial harm; that Mother continued a relationship with the boyfriend; that she failed to protect M.A.C. from such abuse; and that she failed to report same. Mother also argues that the testimony of Ms. Zahurones, M.A.C.’s rape and abuse counselor, upon which the court relied substantially in reaching its findings, was inadmissible hearsay and did not comply with the requirements in Tenn. R. Evid. 803(25); and that the facts relied upon by Ms.

⁷ “Token support” is support that, under the circumstances, is insignificant given the parent’s means. Tenn. Code Ann. § 36-1-102(1)(B).

⁸ Tenn. Code Ann. § 34-1-102(1)(a) provides: “Parents are the joint natural guardians of their minor children, and are equally and jointly charged with their care, nurture, welfare, education and support and also with the care, management and expenditure of their estates[.]”

Zahurones in reaching her opinion were untrustworthy and not in compliance with Tenn. R. Evid. 703.

Ms. Zehurones is a clinical therapist at the Rape and Sexual Abuse Center, an organization whose primary purpose is treating children and adults who have been victims of rape, sexual abuse, childhood sexual abuse and sexual assault. At the time of the hearing, she had a Master's degree and had been affiliated with the Center for approximately seven years; during the last two years, she worked exclusively with children alleging some type of sexual abuse. In her role as therapist, she identifies symptoms, behavioral problems and emotional issues presented by a patient and develops and implements appropriate therapies. She testified that she first met with M.A.C. on December 15, 2006 and had sixteen sessions with him, the last (prior to the hearing) being on May 25, 2007. M.A.C. was accompanied by Grandmother at the first session, but was alone at the subsequent sessions. M.A.C. first related the alleged sexual abuse with Mother's boyfriend on his first visit and, as the sessions continued, spoke with more specificity about the abuse. He related that he told Mother about the sexual contact with her boyfriend (which occurred while she was at the home); that Mother got into an argument and asked boyfriend to leave; that boyfriend did not leave and Mother did not make him leave. Ms. Zahurones was impressed that M.A.C. never varied in describing how he was abused throughout the sessions. She testified that throughout the sessions there was no indication that he was embellishing the story, had been coached, or was fabricating the story. At the time of the hearing, M.A.C. was progressing well in his treatment. Ms. Zahurones was of opinion on the date of the hearing that M.A.C. was not ready for discharge; that he needed to be in a supportive and safe environment; and that he should not have any contact with Mother's boyfriend.

The testimony of Ms. Zahurones relating to the statements of sexual abuse made to her by M.A.C. was admitted under Tenn. R. Evid. 803(25), which provides:

Hearsay exceptions. The following are not excluded by the hearsay rule:

- (25) Children's statements. Unless the circumstances indicate lack of trustworthiness, statements about abuse or neglect made by a child alleged to be the victim of physical, sexual, or psychological abuse or neglect, offered in a civil action concerning issues of dependency and neglect pursuant to T.C.A. § 37-1-102(b)(10), issues concerning severe child abuse pursuant to T.C.A. § 37-1-102(b)(19), or issues concerning termination of parental rights pursuant to T.C.A. §37-1-147(d). Declarants of age thirteen or older at the time of the hearing must testify at the hearing unless unavailable as defined by T.R.Evid. 804(a); otherwise this exception is inapplicable to their extrajudicial statements. [Amended by order entered January 28, 1993, and effective July 1, 1993; and by order entered January 31, 2003, and effective July 1, 2003.].

The admissibility of the statements of M.A.C., therefore, is dependent upon their trustworthiness. In a similar case, the court in *Department of Human Services v. Purcell*, 955 S.W.2d 607 (Tenn. Ct. App. 1997) (perm. app. den. Sept. 8, 1997) opined that “the determination of trustworthiness is a matter for the trial court to decide and his decision will not be disturbed on appeal unless there is a showing of abuse of discretion.” *Id.* at 609. The court in *Purcell* noted evidence in the record that corroborated the statements of the children. *See also Department of Human Services v. M.S. & J.S.*, No. M2003-01670-COA-R3-CV, 2005 WL 549141, at *17 (Tenn. Ct. App. March 8, 2005) (perm. app. den. Aug. 29, 2005).

Mother correctly points out that there is no corroborating evidence in this record of the incidents related by M.A.C. to Ms. Zahurones. Mother denies that she walked in while her boyfriend was allegedly abusing M.A.C. and testified she felt that M.A.C. was coached to make the report. Mother further argues that the fact that M.A.C. made the first statements within five minutes of arriving for his first visit and an asserted lack of detail with regard to some of the information conveyed by M.A.C. to Ms. Zahurones suggest a lack of trustworthiness. We respectfully disagree. Ms. Zahurones noted the exceptional maturity of M.A.C. for his age - a quality with which Mother agreed - and that he exhibited such maturity in his interactions with her and in his relating the circumstances of the abuse. Significant to her was the fact that, unlike situations where a child’s story would change over a period of counseling sessions, M.A.C. was consistent in his recitation of the event throughout her treatment of him. The consistency of M.A.C.’s statements in fifteen sessions with Ms. Zahurones outside of the presence of Grandmother is sufficient evidence of trustworthiness to make his statements admissible evidence under Tenn. R. Evid. 803(25). Moreover, while there was clearly tension between Mother and Grandmother, there is no proof in the record to indicate that Grandmother procured such statements by M.A.C. Taking the proof as a whole, any inference arising from the tension between Mother and Grandmother would be drawn contrary to Mother’s insistence and in favor of a finding that Grandmother’s efforts were directed to protect the children and to allow Mother to regain full custody of them.⁹

For the same reason, we hold that Ms. Zahurones was, consistent with Tenn. R. Evid. 703, entitled to rely on the statements of M.A.C. in reaching and testifying as to her opinions.

The juvenile court also found that Mother failed to protect M.A.C. from her boyfriend and allowed him to be a victim of sexual abuse, thereby committing “severe child abuse,” as defined in Tenn. Code Ann. § 37-1-102(b)(21), and establishing the ground for termination of her parental rights set forth at Tenn. Code Ann. § 36-1-113(g)(4). Having reviewed the record, we cannot conclude that the evidence clearly and convincingly shows that Mother knowingly failed to protect M.A.C. from her boyfriend or knowingly allowed him to be abused.

⁹ We also note the trial court’s finding that Grandmother’s testimony was more credible than Mother’s and, in light of the trial court’s long history with this case and familiarity with the parties, rely upon same.

Tenn. Code Ann. § 37-1-102(b)(21) defines "severe child abuse" as:

(A) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause great bodily harm or death and the knowing use of force on a child that is likely to cause great bodily harm or death;

(B) Specific brutality, abuse or neglect towards a child which in the opinion of qualified experts has caused or will reasonably be expected to produce, severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or retardation, or severe impairment of the child's ability to function adequately in the child's environment, and the knowing failure to protect a child from such conduct; or

(C) The commission of any act towards the child prohibited by §§ 39-13-502 - 39-13-504, 39-13-522, 39-15-302, and 39-17-1005 or the knowing failure to protect the child from the commission of any such act towards the child; or

(D) Knowingly allowing a child to be present within a structure where the act of creating methamphetamine, as that substance is defined in § 39-17-408(d)(2) is occurring.

Id.

That the person's failure to protect be "knowing" requires actual knowledge of relevant facts and circumstances or deliberate ignorance or reckless disregard of information presented. *In Re R.C.P.*, No. M2003-01143-COA-R3-PT, 2004 WL 1567122, at *7 (Tenn. Ct. App. July 13, 2004). "A parent's failure to protect a child will also be considered 'knowing' if the parent had been presented with sufficient facts from which he or she could have and should have recognized that severe child abuse had occurred or that it was highly probable that severe child abuse would occur." *Id.* at *7.

M.A.C. related to Ms. Zahurones that when he told Mother of boyfriend's inappropriate actions, Mother engaged boyfriend and got into an argument with him; Mother did not order boyfriend to leave the house or report the incident to authorities. As noted earlier, Mother denies that the incident occurred or that M.A.C. told her about it. Upon picking up M.A.C. from Mother's home, Grandmother learned of the incident and reported it to the Department of Children Services, where she entered into the Immediate Protection Agreement which provided that neither Mother nor her boyfriend would have further contact with M.A.C. Grandmother adhered to the Agreement and there is no proof that M.A.C. was thereafter exposed to the possibility of further abuse. While we do not excuse Mother's subsequent denial that the incident occurred, her failure to report the incident to authorities or her continued relationship with the perpetrator of the abuse, we cannot hold that these constituted a knowing failure to

prevent the abuse, as we would be required to do in order to sustain the juvenile court's finding. Simply put, there were not sufficient facts appearing in this record for Mother to know of the abuse or her boyfriend's proclivity to commit same and her failure to prevent it.

III. Best Interest of the Children

To terminate parental rights, it is not only necessary to prove at least one of the grounds for termination, but the court must also prove by clear and convincing evidence that terminating the parent's rights is in the best interest of the child. *See* Tenn. Code Ann. § 36-1-113(c)(2). The best interest of the child is to be determined from the perspective of the child rather than the parent. *See White v. Moody*, 171 S.W.3d 187,194 (Tenn. Ct. App. 2004). Tenn. Code Ann. § 36-1-113(i) provides a noncomprehensive list of factors to be considered in determining whether termination of parental rights is in the best interest of the child:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5- 101.

Id.

In its Order terminating Mother's rights, the juvenile court did not make specific findings as to the factors listed above. A transcript of the court's ruling was attached to the Order in which the court found that Mother had not made an adjustment in her circumstances or conduct to take seriously her responsibility to parent and protect her children; that she had not maintained regular visitation or support; that there was no meaningful relationship between Mother and the children; and that a change of caretakers from Grandmother to Mother would be harmful to the children. While there is no requirement that the trial court make a written finding on each of the factors enumerated in Tenn. Code Ann. § 36-1-113(i), *see In Re Adoption of K.B.H.*, 206 S.W.3d 80 85 (Tenn. Ct. App. 2006) (perm. app. den. July 24, 2006), Tenn. Code Ann. § 36-1-113(k) requires that the trial court enter an order that makes specific findings of fact and conclusions of law. Compliance with the statutory requirements gives this court a more complete explanation of the trial court's ruling and allow for more expeditious appellate review. *See, e.g., White v. Moody*, 171 S.W.3d 187 (Tenn. Ct. App. 2004) (perm. app. den. March 21, 2005); *In re M.J.B.*, 140 S.W.3d. 643 (Tenn. Ct. App. 2004). Failing to comply with the statute can result in a remand for the sole purpose of preparing written findings of fact and conclusions of law. *See generally White v. Moody*, 171 S.W.3d 187 (Tenn. Ct. App. 2004).

We have determined that a remand for the court to prepare written findings regarding its consideration of the "best interest" factors is not necessary in this case. We have the benefit of the court's written findings under Tenn. Code Ann. § 36-1-113(g) as well as its oral findings under Tenn. Code Ann. § 36-1-113(i). There is ample evidence supporting the court's conclusion that termination was in the best interest of the children. In addition to the support and visitation factors discussed above, Mother continues to maintain a relationship with her boyfriend and, while she has had some success in complying with the prior orders of the court, we cannot conclude that she has shown lasting changes in the behaviors that led to the children being placed with Grandmother.¹⁰ Significantly, the children are presently in the sort of stable and supportive environment recommended by Ms. Zahurones.

¹⁰ It was not inappropriate for the court to review Mother's compliance with the orders entered in the dependency and neglect proceeding in its consideration of the factors set forth in Tenn. Code Ann. § 36-1-113(i).

IV. CONCLUSION

For the reasons set forth above, we reverse the juvenile court's findings that Mother abandoned the children by failing to visit and that Mother committed severe child abuse; we affirm the finding that Mother has abandoned the children by failing to support them and that termination of Mother's parental rights is in the best interest of the children; and we affirm the judgment terminating the parental rights of the mother.

The case is remanded to the Juvenile Court for Rutherford County for further proceedings in accordance with the judgment of this court. Costs are assessed to Appellant, for which execution may issue, if necessary.

RICHARD H. DINKINS, JUDGE